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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/544,101	08/02/2005	Konrad Tetenborg	P70652US0	2274
136 7590 10/24/2008 JACOBSON HOLMAN PLLC 400 SEVENTH STREET N.W. SUITE 600 WASHINGTON, DC 20004				
EXAMINER DESAI, HEMANT				
ART UNIT		PAPER NUMBER		
3721				
MAIL DATE		DELIVERY MODE		
10/24/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/544,101

Applicant(s)

TETENBORG ET AL.

Examiner

Hemant M. Desai

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

Response to Amendment

1. Examiner is withdrawing the allowable subject matter indicated in the final rejection sent out on 6/2/2008. Examiner is also withdrawing the finality of that action and the non-final rejection is as follows:

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to

be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claim 1 is provisionally rejected on the ground of nonstatutory double patenting over claims 21-22 of copending Application No. 10/545,687. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: claims 21 and 22 of Patent Application No. 10/545,687 discloses the process for manufacturing a including supplying a single web that is wound up on a roller, cutting the web into four film segments, and joining the seams by applying extruded adhesive.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitao (6195964) and Watanabe et al. (5139346) and further in view Aubry et al. (4708705) .

Kitao discloses process for manufacturing a bag from polymer film material, having four walls (7, 9, fig. 3a), cutting the web into four film segments (7,9) and sealing the connected film segments so as to form at least one sealed end of the bag (fig. 3b). Note that cutting the web into four segments is inherent part of Kitao's method of making the bag

Kitao by , as mentioned above, disclose the bag with four walls with four seams except for forming one part of the four seams being formed by a joining process in which addition extruded joining material is applied. However, Aubry et al. discloses that it is known in the process of making bag by a joining process in which addition extruded joining material is applied (see col. 2, lines 7-14, lines 47-51; col. 3, lines 20-23, 54-65; figs. 4-6) to reinforce the bag at its critical points such as the seams. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to join the seams for forming the bags in the process of Kitao for manufacturing the bag in by joining process in which addition extruded joining material is applied as taught by Aubry et al. to reinforce the bag at its critical points such as the seams.

The modified process of Kitao by Aubry et al., as mentioned above, disclose the bag with four walls with four seams which are join by the process in which addition

extruded joining material is applied, except for the material required for forming the bags is fed in the form of a single film web that is wound up on a roll. Watanabe et al. disclose that it is known in the bag making art, wherein the bag is made of four walls to provide the material required for forming the bags is fed in the form of a single film web (23, fig. 2) that is wound up on a roll (24, fig. 2) to the unwinding station, cutting the web into four segments (9, fig. 7) to make the manufacturing simpler and to make it mechanize and thus the manufacturing of the flexible container (bag) more efficient (see col. 6, lines 56-62). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to feed the material required for forming the bags in the process of Kitao for manufacturing the bag in the form of a single film web that is wound up on a roll, cut the web into four segments as taught by Watanabe et al. to make the manufacturing simpler and to make it mechanize and thus the manufacturing of the bag more efficient.

Regarding claim 2, Kitao discloses that the bag comprises side gussets (see fig. 1).

Regarding claim 3, Kitao discloses that the bottom of the bag is formed using transverse sealing.

Regarding claim 4, Kitao discloses that the bottom of the bag is formed exclusively by a squeezing process and a transverse sealing process.

Regarding claim 5, Kitao discloses that the bottom formation of the bag is followed by a filling process of the bags.

Regarding claim 6, Kitao discloses that the top end of the bag is also sealed using transverse sealing (12, fig. 6b).

Regarding claim 7, Kitao discloses that the bag is formed and filled partly in a form, fill and seal machine.

Regarding claim 10, the modified process of manufacturing the bag of Kitao teaches that the film tube to produce a bag made of four walls that are fed parallel (see fig. 6 of Watanabe et al.) and defines the longitudinal axis of the formed film tube and join by heat weld with each other.

Response to Arguments

6. Applicant's arguments with respect to claims 1-7 and 10 have been considered but are moot in view of the new ground(s) of rejection.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M. Desai whose telephone number is (571) 272-4458. The examiner can normally be reached on 6:30 AM-5:00 PM, Mon-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hemant M Desai/
Primary Examiner, Art Unit 3721